

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS**

In re Application of:)
Jefferson L. Patrick) Examiner: Newhouse,
) Nathan J.
Application no: 10/826,763)
Filed: 04/16/2004) art Unit: 3782
)
Title: BOAT-CARRYING RACK FOR USE) Confirmation no: 1213
ON TRANSPORTING VEHICLES)

APPELLANT'S APPEAL BRIEF

Mail Stop Appeal Brief – Patents
Commissioner for Patents
PO Box 1450
Alexandria, VA. 22313-1450

Dear Honorable Commissioner,

Appellant hereby submits his brief under 37 C.F.R. § 1.192 in support of his appeal, notice of which was filed under 37 C.F.R. § 1.191 on Jan. 5, 2009.

Table of contents

REAL PARTY OF INTEREST	pg. 3
RELATED APPEALS AND INTERFERENCES	pg. 4
STATUS OF CLAIMS	pg. 5
STATUS OF AMENDMENTS	pg. 6
SUMMARY OF CLAIMED SUBJECT MATTER	pgs. 7-10
GROUND OF REJECTION TO BE REVIEWED ON APPEAL	pg. 11
ARGUMENTS	pgs. 12-30
CLAIMS APPENDIX	pgs. 31-40
EVIDENCE APPENDIX	pg. 41
RELATED PROCEEDINGS APPENDIX	pg. 42

REAL PARTY IN INTEREST

The real party in interest is Jefferson L. Patrick, an individual residing at 103 McKinney Street, Estill Springs, Tenn.

RELATED APPEALS AND INTERFERENCES

There are no other appeals and interferences known to Applicant.

STATUS OF CLAIMS

Appellant is appealing the final rejection of claims 1-6, 9-14 and 16-24.

STATUS OF AMENDMENTS

No amendments have been submitted after the final rejection mailed 09/04/2008.

SUMMARY OF THE CLAIMED SUBJECT MATTER

All references in this document to locations in the specification are taken from the substitute specification included in the response mailed 04/19/2007.

The present invention is directed to an accessory rack 10 (Fig. 1) for carrying objects such as small boats on an ATV (Fig. 2, pg. 2 ln. 16) or the like providing suitable front and rear platforms, such as a gear-carrying rack (Figs. 2, 3, pg. 2 ln. 20) for mounting of the accessory rack 10. Accessory rack 10 includes a front support assembly 14 and a rear support assembly 12 (Fig. 1, pg. 4 lns. 6 - 8) in facing relation, each of the assemblies having an elongated bottom base member (18, 18a, pg. 4 ln. 8) adapted to be connected across existing, respective front and rear gear-carrying racks of an ATV (Figs. 2, 3, pg. 5 lns. 1 - 2). Each support assembly comprises a single post 24, 24a extending upward over a respective front and rear of the ATV, the posts extending upward generally over front and rear centers of the ATV (Fig. 1, pg. 5 ln. 5). The posts are constructed having a first, lower portion (30, 30a, Fig. 1, pg. 5 ln. 5) connected to a middle of a respective base member (18, 18a, Figs. 1, 2, pg. 5 ln. 5) mounted to and extending across a width of a respective gear-carrying rack (pg. 4 lns. 7-8), the lower portions extending upward about half the height of the respective support assembly (pg. 5 ln. 6). A second, upper portion (32, 32a, Fig. 1) of each support assembly is adjustably disposed within a respective first portion (pg. 5 lns. 7 - 8), and extends upward to about 3 feet above the base members (pg. 5 lns. 9 - 10). The top of each of the upper portions is

connected to a middle portion 42, 42a (Figs. 1, pg. 5 ln. 19) of a horizontal boat-receiving cross member 20, 20a (Fig. 1, pg. 4 ln. 9), the front and rear middle portions connected to one another by an elongated beam 16 aligned coplanar with the upright posts, the beam also generally centered over the ATV (sentence bridging pgs. 2 – 3, Fig. 1). End portions adjustably inserted into opposed horizontally extending arms of the middle portions each have an upturned arm 22, 22a and an adjustably mounted horizontal arm 48, 48a (Fig. 1, pg. 5 lns. 18 – 22, pg. 6 lns. 3-5) that form a cradle for whatever is being carried. Gear attachments are provided at points along a longitudinal center of the ATV and near front and rear cargo racks of the ATV.

With respect to Applicant's means-plus-function clauses, antecedence for these clauses is found in the specification and drawings as noted below:

Claim 17:

“mounting means for removably mounting...” – Fig. 2, 3, numbers 21, 21a, 72, 72a, pg. 5 lns. 2-3, pg. 7 lns. 7 – 13.

“a single, adjustable-in-height vertical support means attached to said mounting means...” – Figs. 1 – 3, numbers 18, 18a, 24, 24a

“is generally centered widthwise with respect to said cargo rack, and thereby over a middle of a respective front or rear of said vehicle” - pg. 5 ln. 5 describes the lower support portions 30, 30a of supports 24, 24a “connected to a base member at the center thereof...” (Fig. 1), Figs. 2, 3 shows supports 24, 24a centered on the cargo racks.

“Elongated horizontal support means attached at a center thereof to a

top of said single, adjustable-in-height vertical support means... oriented to extend widthwise over a respective front or rear of said vehicle... ” - Fig. 1, numbers 20, 20a, pg. 5 lns. 18 – 20 describe connection to the “middle portion” of the upper cross members. This structure also shown in Fig. 3.

“oriented to extend widthwise over a respective front or rear of said vehicle...” - crossmembers 20 and 20a shown in Fig. 2 as extending over a front and rear of the ATV. Also shown in Fig. 3 as extending widthwise over the cargo racks of the ATV.

“connection means connected between said center of said elongated horizontal support means of said front end assembly and said center of said elongated horizontal support means of said rear end assembly...” - Fig. 1, beam 16, stubs 50, 50a, sleeve 52 and associated connecting fasteners, described at pg. 6 lns. 8-16.

“extending lengthwise over a middle of said vehicle” Fig. 2, Fig. 3 shows beam 16 extending over a middle of the ATV.

Claim 18:

“first vertical support portion means... so that said first vertical support portion means is generally centered widthwise on said cargo rack” is found in Fig. 1 at 30, 30a, and shown generally centered at Figs. 2 and 3. These are discussed at pg. 2 lns. 19 – 21, pg. 4 ln. 7 – 8, pg. 5 lns. 4 – 5.

“second vertical support portion means... for locking said second vertical support portion means at a selected height over a respective said front

or rear of said vehicle...” This is found in Fig. 1 at 32, 32a and discussed at pg. 5 lns. 4 – 17. This structure and orientation is also shown in Figs. 2 – 4.

Claim 19:

“elongated middle portion support means... and attached at said center thereof to an upper end of said second vertical support means...” is found in Fig. 1 at 42, 42a and discussed at pg. 5 lns. 18 – 20. This structure and orientation is also shown in Figs. 2 – 4.

“end portion means... for locking said elongated horizontal support means at a selected width and for being removable” is found in Fig. 1 at 22, 22a, 48, 48a and discussed at pg. 5 lns. 19 – 23 and pg. 19 lns. 1 – 7.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1 and 22 are anticipated under 35 USC §102 by the reference to Shumante (US 5,544,798).

Whether claims 1-4, 9-15, 17-20 and 22-24 are unpatentable under 35 USC §103(a) over the reference to Armstrong (US 6,517,134) in view of Oliver (US 3,819,074).

Whether claim 5 is unpatentable under 35 USC §103(a) over the reference to Armstrong (US 6,517,134) in view of Oliver (US 3,819,074) and Toivola (US 6,126,052).

Whether claim 6 is unpatentable under 35 USC §103(a) as being unpatentable over the reference to Armstrong (US 6,517,134) in view of Oliver (US 3,819,074), Toivola (US 6,126,052) and Muzzi (5662451).

Whether claim 16 is rejected under 35 USC §103(a) as being unpatentable over Armstrong (US 6,517,134) in view of Oliver (US 3,819,074) and Whiting (US 4,630,990).

Whether claim 21 is unpatentable under 35 USC §103(a) over Armstrong (US 6,517,134) in view of Oliver (US 3,819,074), Toivola (US 6,126,052) and Vieira (US 5,560,666).

ARGUMENT

REJECTIONS UNDER 35 USC §102

CLAIM 1

The reference to Shumante et al ((hereafter Shumante) teaches an article carrier mountable in a pickup truck bed. As shown in Fig. 1 and discussed at col. 2 lns. 56-67, the carrier is mounted and stabilized in the bed by straps 21 extending between attachment points 18 on an upper longitudinal member 13 of the carrier to “cargo hooks or rings 20, along the side walls as shown in Fig. 1“. At each end of his carrier is a vertical post 16, 16’ extending upward about 5 feet over the bed of the truck and above cab 11, with a transverse bar 14, 14’ about 4 to 6 feet in length mounted to the top of each vertical post. Eye bolts 26, 26’ at each end of the transverse bars provide attachment points for securing canoes to the transverse bars. A post foot 17, 17’ is attached to the bottom of each post, and rests on the truck bed.

Applicant’s claim 1 provides, in the preamble, “An accessory rack for supporting small boats on a transporting vehicle having available a front platform site extending generally across a width of a front of said vehicle...”. Applicant thus claims two platform sites. This feature is not found in Shumante, as the front of the vehicle of Shumante is not shown. As such, the carrier of Shumante rests exclusively on a single rear platform, namely the bed of a pickup truck vehicle. It is respectfully submitted no inference may be

drawn by which to reject claim 1 from features that are not shown or described in the prior art. Please see *In re Verdegaal Bros. V Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987), “A claim is anticipated only if each and every element as set forth in claim is found, either expressly or inherently described, in a single prior art reference”.

Applicant’s claim 1 further provides “a front assembly having an elongated front bottom base member attachable across a width of said front platform site and a rear assembly having an elongated rear bottom base member attachable across a width of said rear platform site”. It is respectfully submitted that the carrier of Shumante is not attachable “across a width” of a platform. Rather, it is attachable using straps attached “along side walls” (col. 2 lns. 59-64) to “conventional hooks or rings as usually mounted on the inside walls of most pickup trucks” (col. 2 lns. 4-6).

CLAIM 22

Applicant’s claim 22 provides “mounting a first single vertical support so that said first single vertical support extends upward over a middle of a front of said vehicle...”. This feature is not found in Shumante as his carrier extends exclusively over the bed, or rear, of a pickup truck. As noted above, the front of the vehicle in Shumante is not shown. It is respectfully submitted that no inference may be drawn by which to reject claim 22 from features that are not shown or described in the prior art. Please see *In re Verdegaal Bros. V Union*

Oil Co. of California (citation omitted) as applied to claim 1 above.

REJECTIONS UNDER 35 USC §103(a)

CLAIMS 1-4, 10-11

The reference to Armstrong teaches a pair of separate, unconnected T-shaped support racks 10. The racks are each constructed having a lower vertical member 22 that attaches at its bottom to a truck bed by a bracket 56, and is attachable to sides of the vehicle or to a bed toolbox by like brackets 56 (Fig. 1). An upper horizontal member 24 is slidably disposed on each lower member 22 and pinned thereto. Adjustable-in-width vertical retention structures 20 extend upward from each end of horizontal members 24. When pins 60 holding respective racks to their upper brackets 56 are removed, the racks pivot about pins 60 in respective lower brackets 56 so that the carriers are foldable to rest in the bed of the truck, as shown in Fig. 4.

The reference to Oliver teaches a boat loading and carrying apparatus having an intermediate support member 26 that connects “between the upper end of front support member 19 and rack 13 to hold the upright support member erect when the boat is being drawn to the loaded position.” (col. 2 lns. 41-45). Member 26 is fitted and pinned at one end into a sleeve 44 affixed to the underside of a lateral support member 28, and fitted and pinned at the other end to a sleeve 45 attached to support 19.

The Office has stated “Armstrong discloses an accessory rack... with a front platform site extending generally across the width of the front of the vehicle...”. However, as noted, the front of the vehicle is not shown in Armstrong, and only a single rear platform, i.e. the truck bed, is disclosed. Therefore, it is respectfully submitted that there is no basis for “a front platform site extending generally across a width of a front of said vehicle” evident in Armstrong. Here, the reference to Armstrong suffers the same defect as Shumante in that the entire device of Armstrong is mounted to a single platform in the bed, or rear, of a pickup truck, with the front of the truck not being shown. Thus, it is respectfully submitted that this claim feature cannot be found in Armstrong.

With respect to combining the connecting member of Oliver with the racks of Armstrong, the Office states “it would have been obvious to one of ordinary skill in the art at the time of invention to include a single elongated upper beam between the front and rear assemblies of Armstrong, in order to give strength to the accessory rack when it is in a working position”.

In this portion of the rejection to claim 1, it is respectfully submitted that the Office fails to provide a legally valid reason for this combination. In *In re Rouffet* (47 USPQ2d 1453 (Fed. Cir. 1988), the Federal Circuit explained:

To reject claims in an application under section 103,
an examiner must show an un rebutted prima facie

case of obviousness. In the absence of a proper prima facie case of obviousness, an applicant who complies with the other statutory requirements is entitled to a patent”.

In this decision, the Board was reversed and the rejections ruled improper because they failed to provide a suggestion for combining the references. Here, the court stated:

As this Court has stated, “Virtually all [inventions] are combinations of old elements” Therefore, an examiner may often find every element of a claimed invention in the prior art. If identification of each claimed element in the prior art were sufficient to negate patentability, very few patents would ever issue. Furthermore, rejecting patents solely by finding prior art corollaries for the claimed elements would permit an examiner to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention. Such an approach would be “an illogical and inappropriate process by which to determine patentability”. To prevent the use of hindsight based on the invention to defeat patentability of the invention, this court requires the examiner to show a motivation to combine the references that create the case of obviousness.

“Merely stating an advantage of combining references to reject Applicant’s claim 1 is not the same as “show[ing] a motivation to combine the references”.

More recently, in *KSR Int’l v Teleflex Inc.*, 127 S. Ct. 1727, 1740-1741, 82 USPQ2d 1385, 1396 (2007), the Supreme Court cited *In re Kahn*

with approval, which noted,

“Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”

(*In re Kahn*, 441 F.3d 977, 988, CA Fed. 2006). Looking for the “articulated reasoning with some rational underpinning” in the above statement by the Office used to reject claim 1, the first part of the statement, “It would have been obvious... to include a single elongated upper beam between the front and rear assemblies of Armstrong...” merely states what the proposed modification is to be. The last part of the statement, “in order to give strength to the accessory rack when it is in a working position” appears to be a conclusory statement rather than an “articulated reasoning with some rational underpinning”. MPEP 2144 states “The strongest rationale for combining references is a recognition... in the prior art or... based on scientific principles or legal precedent, that some advantage would have been produced by their combination”. *In re Sernaker*, 702 F.2d 989, 994-995 (Fed. Cir. 1983) supports this proposition, stating “The lesson of this case appears to be that prior art references in combination do not make an invention obvious unless something in the prior art references would suggest the advantage to be derived from combining their teachings”. The

court makes it clear that the advantage is not the suggestion, but something else suggests the advantage. In other words, the strongest rationale is a recognition (i.e. a suggestion) in the prior art that an advantage will result.

In view of the foregoing, it is respectfully submitted a connecting member 26 as found in Oliver used to connect between the racks of Armstrong, as suggested by the Office, would serve no purpose or provide any advantage to motivate one of average skill in the art to make such a combination, as the racks of Armstrong already are provided with brackets 56 that stabilize, strengthen and hold the racks upright. The extent of such stabilization is seen at col. 1 lns. 63-65, "When the rack system is employed as a working station, a sheet of plywood is placed thereon to provide a scaffold platform upon which a person can stand.". Thus, no advantage or improvement would result in Armstrong by the proposed modification. As there is no suggestion in the art of any other advantage, and no articulated reasoning with a rational underpinning to explain the combination, it is respectfully submitted the proposed combination completely lacks motivation to combine.

In addition to the foregoing, an elongated connecting member between the racks of Armstrong would make the racks inoperable or unsuitable for their intended purpose, which is to fold down into the bed of the pickup truck simply by removing the pin in each of the upper brackets 56, as discussed at col. 4 lns. 58-63. Further, at col. 1 lns. 57-59, Armstrong states "Each of the

embodiments of the rack system can be installed, removed and adjusted by one person". The addition of the connecting member of Oliver would make such installation, removal, folding and adjustment far more difficult for one person, and change the principle and operation of installation, removal and adjustment of the rack system. Please see *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984), "The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification" and "if the French apparatus were turned upside down, it would be rendered inoperable for its intended purpose". Please also see *In re Ratti*, 270 F.2d 810, 123 USPQ at 352 (CCPA 1959), "This suggested combination of references would require a substantial reconstruction and redesign of the elements shown... as well as a change in the basic principles under which the Chinnery et al. construction was designed to operate".

CLAIM 9

With respect to claim 9, the Office is correct in that the reference to Armstrong does not disclose a stub portion attached to the center of the middle portion. It is respectfully submitted that there is no motivation in Armstrong for attaching such a stub portion to the center of a middle portion for receiving an upper beam member for reasons as noted with respect to claim 1. Please see *In re Kahn* (citations omitted) as applied to claim 1 above.

CLAIMS 12, 14

The Office states, “with respect to claim 12, the upper post portion of Armstrong may be adjusted and locked within the lower post portion at a height so that the top of the upper post portion and elongated middle portion is about 3 feet over the vehicle. However, it is respectfully submitted that it is unclear from the reference to Armstrong whether his racks can be adjusted to a distance “about 3 feet over said vehicle”, and whether this distance should be above the bed of a truck or over the cab. Where this distance is selected to be above a bed of the pickup truck, it is unclear whether the rack system is functional for its intended purpose to provide “elevated hauling and work station”, as disclosed in all the figures of Armstrong showing the rack system mounted to a pickup truck where the racks extend above a cab of the truck, which is consistent with carrying a long article, such as a ladder, that would extend over the cab portion of the truck. Here, 3 feet is probably an insufficient height to allow the longer article to clear the cab. In addition, where the front rack is attached to a vertical wall of a toolbox or front wall of a pickup truck, as shown in Fig. 2, the upper vertical post would be blocked from further downward movement once an end thereof it abutted the upper edge or side of the bed or toolbox, so that it is questionable as to whether the front rack can be adjusted lower than 3 feet in height over the bed of the truck. Where the distance is selected to be above the cab of the truck, the two vertical support portions do not appear to be of a sufficient length to extend 3 feet over the cab. As such, it is unclear from the reference of Armstrong whether his

racks can be “adjusted... so that a top of said upper post portion and said elongated middle portion is about 3 feet over said vehicle.

Applicant’s selection of “about 3 feet...” is specifically selected “to fit the available space to the height of the driver of the ATV”. Such a selection is irrelevant when used on a pickup truck as, in at least one instance, the distance to be cleared is the height of the cab, not the operator of the vehicle.

CLAIM 13

Claim 13 provides specific length dimensions for the front and rear bottom feet so that these feet are “attachable across a width” of the front and rear platforms. In contrast, the reference to Armstrong discloses a short bracket fastened to the bed of the truck, and comprising vertical tabs having apertures alignable with openings in the support structures 18, and through which a locking pin 60 is passed (Fig. 1, col. 4 lns. 38-58). This bracket of Armstrong is not “attachable across a width” of the pickup truck bed, but only extends along a small portion of the width of the bed. Further, no advantage or improvement is seen in extending the brackets of Armstrong. Please see *In re Sernaker* (citations omitted) as applied to claim 1 above.

CLAIMS 17 - 19

Applicant’s claim 17 stipulates a “vehicle provided with a front cargo rack for carrying gear over a front of the vehicle and a rear cargo rack for

carrying gear over a rear of the vehicle...”. Applicant thus claims the use of two cargo racks. As noted above, there is no showing of a front of a vehicle in Armstrong, nor is there any discussion of the front of the vehicle of Armstrong, as exemplified by his Figs. 2 and 4, which truncate the vehicle just forward of the bed of the truck. It is respectfully submitted that Armstrong cannot be relied on for any teaching related to “a front cargo rack for carrying gear over a front of the vehicle”. As noted above, Armstrong also only shows a single rear platform, i.e. the bed of a truck, in which the entire rack is mounted. Please see *In re Royka*, “All words in a claim must be considered in judging the patentability of that claim against the prior art” and *In re Wada and Murphy*, appeal 2007-3733, wherein the Office must make “a searching comparison of the claimed invention- including all its claim limitations-with the teaching of the prior art”.

The “front end assembly mounted to the front cargo rack and rear end assembly mounted to said rear cargo rack” each further comprises “mounting means for removably mounting said front end assembly and said rear end assembly to a respective said front cargo rack and said rear cargo rack...”. This clause is a means-plus-function clause interpreted by 35 USC 112, 6th paragraph, which states in part, “such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.”. As dictated by *In re Donaldson Co.*, 16 F.3d 1189, 29 USPQ2d 1845 (Fed. Cir. 1994),

The plain and unambiguous meaning of paragraph six is that one construing means-plus-function language in a claim must look to the specification and interpret that language in light of the corresponding structure, material, or acts described therein, and equivalents thereof.

As such, it is respectfully submitted the Office is in error with respect to its analysis of claim 17. Here, the Office states with respect to Armstrong, "front and rear end assemblies 10 are mounted to front and rear vehicle cargo racks... with means for removably mounting and front and rear assemblies (bolts 54, fig. 3)". As disclosed in Applicant's specification at pg. 5 lns. 2-3 and shown in Fig. 3, "base members are connected to cross members of installed racks by means such as U-bolts 21 (Fig. 3) provided at each corner".

As noted above, there is no corresponding showing whatsoever in Armstrong of a "front cargo rack..." as stipulated in Applicant's means-plus-function clause, and disclosed in Fig. 2 and throughout his specification, such as pg. 7 lns. 7-8. If the bed of the truck of Armstrong is considered to be a cargo rack, then there is only a single, rear cargo rack in Armstrong. Also, Armstrong uses a bracket intended to be left in place in the bed of the truck and separable from his vertical support, with the vertical support attached to the bracket by a single pin, which may be removed (in conjunction with a pin in the wall bracket) to allow removal of his support rack (Fig. 1, sentence bridging cols. 4 and 5 of Armstrong).

In contrast, Applicant's disclosure provides that his entire structure, including all of the "mounting means", is removably mounted to the cargo racks. No portion of Applicant's structure is left behind mounted to the cargo racks when the racks are removed. Accordingly, it is respectfully submitted that Applicant's structure and function related to his "mounting means" of the front and rear assemblies as disclosed and claimed are not analogous to the structure and function of Armstrong.

Applicant further specifies "a single, adjustable-in-height vertical support means... over a middle of a respective front or rear of said vehicle..." (Fig. 2, components 24, 24a), and "elongated horizontal support means... oriented to extend widthwise over a respective front or rear of said vehicle..." (Fig. 2, components 20, 20a). Again, it is respectfully submitted there is no teaching whatsoever in Armstrong of anything related to a front of his vehicle.

Claim 17 further specifies "connection means connected between said center of said elongated horizontal support means of said front end assembly and said center of said elongated horizontal support means of said rear end assembly..." (Fig. 1, component 16). No such "connection means" is disclosed in Armstrong. Rather, this component is taken from the reference to Oliver. Here, as noted above, it is respectfully submitted there is no advantage to be gained or improvement to be found in such a "connection means" to hold the

racks of Armstrong upright and provide strength, as noted above with respect to claim 1. The reason for this is that Armstrong already relies on brackets 56 and pins 60 attached to side, vertical walls of his truck or toolbox for such stabilization and strength. Please see *In re Sernaker* (citation omitted) as applied to claim 1 above. Further, Applicant's "connection means" is a three-part component having a central connection sleeve and discrete front and rear bars so that a distance between the front and rear assemblies may be customized (pg. 6 lns. 10-16). No such corresponding structure is found in Oliver.

Applicant's "whereby" clause of claim 17 provides "a boat, other elongate objects or the like are supported lengthwise... by a said single, adjustable-in-height vertical support means over a front portion of said vehicle and a said single vertical support means over a rear portion of said vehicle". As noted, there is no showing in Armstrong of anything related to "a front portion of said vehicle".

CLAIMS 20, 21

With respect to claim 20, the Office relies on the reference to Oliver for the "connection means" of claim 17, and which incorporates the "elongated horizontal support means" of claim 19. Here, Applicant specifies "a single short connection means attached to said center of each said elongated middle portion support means".

While Oliver discloses sleeves 44, 45 for receiving a beam 26 (Fig. 5), there is no “end portion means...” or “elongated horizontal support means having opposed ends and attached at said center thereof to an upper end of said second vertical support means... for supporting a boat, other elongate objects or the like...” as specified in claim 19 “over a rear portion of said vehicle...” as set forth in claim 17. Rather, at the rear of his vehicle, Oliver discloses a pair of longitudinal members supported at their ends to gutters of a vehicle, with a second beam-receiving sleeve attached to the forward longitudinal member. Thus, it is respectfully submitted that all the claim elements of claim 20 are not found in the combination of Armstrong and Oliver. Also as noted above, the combination of Armstrong and Oliver lacks motivation to combine as there is no improvement or advantage to be gained by adding the beam 26 of Oliver to Armstrong.

CLAIM 22

Applicant’s claims 22-24 claim a method for carrying a boat above a vehicle using a single support extending over a front of the vehicle and a single support extending over a rear of the vehicle, mounting a boat-receiving cross members at the top of the single supports, and connecting the front and rear supports together. These claims are rejected without explanation other than “use of the structure disclosed by Armstrong as modified by Oliver discloses this method”. Applicant respectfully refers to *In re Kahn*, 441 F.3d 997, 988

(CA Fed. 2006), cited with approval in *KSR Intl co. v Teleflex Inc.*, 550 U.S. 398, 127 S.Ct. 1727 (2007), “rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”.

CLAIM 5

Claim 5 is rejected over Armstrong in view of Oliver in view of Toivola. The reference to Toivola teaches a carrier having 4 posts, each attached generally at a corner of an ATV (Fig. 1). With respect to this rejection, the Office states “It would have been obvious to one of ordinary skill in the art at the time of invention to carry the accessory rack of Armstrong as modified on an ATV to allow the boat to be carried where only an ATV may travel”. Applicant respectfully submits that the Office has not provided any particular modification or guidance as to how the prior art suggests Applicant’s invention of claim 5, but instead has only provided a conclusory statement. Please see *In re Kahn* (citation omitted) as applied to claim 22 above.

In addition, it is clear the rack system of Toivola would need to be redesigned in order to function as claimed by Applicant, which would change its principle of operation from a carrier based on four posts at corners of an ATV to a single post in the front and a single post in the rear of the ATV. Please see *in re Ratti* (citation omitted) as applied to claim 1 above.

CLAIM 6

Applicant's claim 6 is rejected over Armstrong in view of Oliver, Toivola and Muzzi. The reference to Muzzi teaches a hoist attachable to a front or rear rack of an ATV by U-bolts. Here, the Office states "Armstrong as modified above discloses that the front and rear bottom base members 54 extend across a width of the attachment site...". Applicant respectfully submits that there is no "modification above" that would extend brackets 54 of Armstrong "across a width of each said platform site" as claimed by Applicant. In addition, it is respectfully submitted that, as required by *In re Kahn* (citation omitted) as noted above, there is no "articulated reasoning with some rational underpinning..." to support the rejection to claim 6. Instead, there is only the conclusory statement "It would have been obvious to one of ordinary skill in the art to use U-bolts to connect the modified carrying rack to the platforms of an ATV, as they are the conventional fasteners for such a purpose...". Further, it is unclear what advantage would result or improvement would be made by extending the brackets of Armstrong as suggested by the Office.

Claim 16

With respect to claim 16, rejected over Armstrong in view of Oliver and Whiting, the reference to Whiting discloses a three-point carrying system for a boat. The system includes a front longitudinal bar and a rear longitudinal bar across which the boat rests. Tiedowns are provided at ends of the bars for

the attachment of straps to secure the boat.

Applicant's claim 16 provides gear attachments located at at least one of "a center of said elongated middle portion, at least one end of said front mounting base member at least one end of said rear mounting base member, at an upper end of each said lower upright post portion". These claimed locations allow the attachment of gear either centrally with respect to the vehicle or close to a cargo rack of the vehicle. These locations offer more protection of the gear from obstacles such as branches, boulders or rocks and the like than the tiedowns of Whiting, which are located at ends of his upper bars for securing the boat. It is respectfully submitted that there is no teaching in any of the cited prior art that would suggest desirability or advantages of gear attachments at Applicant's claimed locations.

DEPENDENT CLAIMS 2-6, 9-16, 18-21, 23-24

Dependent claims 2-6, 9-16, 18-21, 23-24 each incorporate at least the limitations of an independent claim from which they respectively depend, and should be allowable upon the allowance of their respective independent claim, in addition to any other reasons offered for allowability herein. Please see *In re Fine*, 837 F.2d 1071, 5 USPQ 2d 1596 (Fed. Cir. 1988).

CONCLUSION

In conclusion, Applicant respectfully submits that, in view of the

foregoing, the Office has not established a *prima facie* case of anticipation with respect to claims 1 and 22, and has not established a *prima facie* case of obviousness with respect to claims 1-4, 9-15, 17-20 and 22-24. Accordingly, Applicant respectfully requests that these rejections be withdrawn, and suggests that the application is in condition for allowance.

Respectfully Submitted,

/Steven M. Clodfelter/

Filed: 04/06/2009

Steven M. Clodfelter. Agent of Record
Registration no. 34,564
Customer no. 20115
915 Merchants Walk, Suite D
Huntsville, Ala. 358166.
Tel. (256) 519-9126
Fax (256) 519-9126

APPENDIX OF CLAIMS INVOLVED IN THE APPEAL

1. An accessory rack for supporting small boats on a transporting vehicle having available a front platform site extending generally across a width of a front of said vehicle and a rear platform site extending generally across a width of a rear of said vehicle, said accessory rack comprising:

a front assembly having an elongated front bottom base member attachable across a width of said front platform site and a rear assembly having an elongated rear bottom base member attachable across a width of said rear platform site,

a single front upright post connected at a lower end to the center of said front bottom base member of said front assembly so that said front upright post is generally centered with respect to said width of said vehicle,

an elongated front boat-receiving cross member connected at the center thereof to an upper end of said single front upright post, said elongated front boat-receiving cross member being generally parallel to said elongated front bottom base member;

a single rear upright post connected at a lower end to the center of said rear bottom base member of said rear assembly so that said rear upright post is generally centered with respect to said width of said vehicle,

an elongated rear boat-receiving cross member connected at the center thereof to an upper end of said single rear upright post, said elongated rear boat-receiving cross member being generally parallel to said elongated rear bottom base member;

a single elongated upper beam member extending between said front boat-receiving cross member and said rear boat-receiving cross member, said elongated upper beam member connected to said center of said front boat-receiving cross member and said center of said rear boat-receiving cross member so that said front upright post, said rear upright post and said upper beam member are generally centered over respective portions of said vehicle.

2. The accessory rack as defined in claim 1 wherein each of said front upright post and said rear upright post further comprises:

a lower upright post portion attached to said center of a respective one of said elongated front bottom base member and said elongated rear bottom base member,

an upper upright post portion attached to said center of a respective one of said front boat-receiving cross member and said rear boat-receiving cross member, each said lower upright post portion and said upper upright post portion configured to be removably and adjustably engagable with each other so that said boat-receiving cross member is locked at a selected height over said vehicle and generally centered over said vehicle with respect to said vehicle width.

3. The accessory rack as defined in claim 2 wherein said front boat-receiving cross member and said rear boat-receiving cross member each has an upturned arm at each end.

4. The accessory rack as defined in claim 2 wherein each of said lower post portion and said upper post portion are constructed of rectangular or square metal tubing, and each provided with a series of alignable, vertically spaced-apart holes to allow a locking member to be inserted through said lower post portion and said upper post portion, locking said boat-receiving cross member at said selected height.

5. The accessory rack as defined in claim 4 wherein said transporting vehicle is an ATV.

6. The accessory rack as defined in claim 5 wherein said front bottom base member and said rear bottom base member extends across a width of each said platform site, and are attachable thereto with U-bolts.

7 (cancelled).

8 (cancelled).

9. An accessory rack as set forth in claim 2 wherein each said upper post portion and said boat-receiving cross member further comprises:

an elongated middle portion generally parallel to said bottom base member and connected at the center thereof to said upper end of said upper

post portion, said elongated middle portion having opposed ends,

a boat-receiving end portion for each of said opposed ends, each said boat-receiving end portion configured to be removably and adjustably engaged, and lockable with a respective end of said middle portion to provide said cross member with a selected width,

a stub portion attached to said center of said middle portion, and facing an opposite one of said front assembly and said rear assembly for removably and slidably receiving and locking to said upper beam member, said stub portion being coplanar with and perpendicular to said middle portion, and said upper beam member and each said stub portion being adaptable so that a user may select a length of said rack for a specific said vehicle.

10. An accessory rack as set forth in claim 9 wherein each said middle portion is about 2 feet in length, and extends about one foot to either side of a top of a respective said upper post portion.

11. An accessory rack as set forth in claim 9 wherein said lower upright post portion is about one half a height of said front upright post and said rear upright post.

12. An accessory rack as set forth in claim 11 wherein each said upper post portion may be adjusted and locked within said lower post portion at a height so that a top of said upper post portion and said elongated middle portion is

about 3 feet over said vehicle.

13. An accessory rack as set forth in claim 9 wherein said front bottom base member is about 33 inches in length and said rear bottom base member is about 43 inches in length.

14. An accessory rack as set forth in claim 9 wherein said upper post portion may be adjusted and locked within said lower post portion so that a top of said upper post portion is about 3 feet above a said front bottom base member and a said rear bottom base member.

15 (cancelled).

16. An accessory rack as set forth in claim 9 further comprising a plurality of gear attachments attached to said rack, each said gear attachment having an opening for receiving a tie-down, and attached adjacent at least one of:

- a center of each said elongated middle portion,
- at least one end of said front mounting base member and at least one end of said rear mounting base member,
- at an upper end of each said lower upright post portion.

17. An accessory rack for carrying a boat, other elongated objects, and the like lengthwise over a middle portion of a vehicle wherein the vehicle is provided

with a front cargo rack for carrying gear over a front of the vehicle and a rear cargo rack for carrying gear over a rear of the vehicle, the front cargo rack and rear cargo rack being generally centered widthwise on the vehicle, said accessory rack comprising:

a front end assembly mounted to said front cargo rack and a rear end assembly mounted to said rear cargo rack, each further comprising:

mounting means for removably mounting said front end assembly and said rear end assembly to a respective said front cargo rack and said rear cargo rack,

a single, adjustable-in-height vertical support means attached to said mounting means so that said single, adjustable-in-height vertical support means is generally centered widthwise with respect to said cargo rack, and thereby over a middle of a respective front or rear of said vehicle,

elongated horizontal support means attached at a center thereof to a top of said single, adjustable-in-height vertical support means, said elongated horizontal support means oriented to extend widthwise over a respective front or rear of said vehicle, for receiving a boat or other elongate objects,

connection means connected between said center of said elongated horizontal support means of said front end assembly and said center of said elongated horizontal support means of said rear end assembly, and extending lengthwise over a middle of said vehicle, for connecting said front end assembly and said rear end assembly together,

whereby a boat, other elongate objects or the like are supported lengthwise over a middle of said vehicle by a said single, adjustable-in-height vertical support means over a front portion of said vehicle and a said single vertical support means over a rear portion of said vehicle.

18. An accessory rack as set forth in claim 17 wherein each said single vertical support means further comprises:

a first vertical support portion means attached to said mounting means so that said first vertical support portion means is generally centered widthwise on said cargo rack,

second vertical support portion means lockably, removably and adjustably engaging said first vertical support portion means, for locking said second vertical support portion means at a selected height over a respective said front or rear of said vehicle, and for being removable, said first vertical support portion means and said second vertical support portion means being locked together at said selected height, forming said single, adjustable-in-length vertical support means.

19. An accessory rack as set forth in claim 18 wherein each said elongated horizontal support means further comprises:

elongated middle portion support means having opposed ends and attached at said center thereof to an upper end of said second vertical support means, for supporting a boat, other elongate objects or the like by said second

vertical support means,

end portion means removably, lockably and adjustably engaging each end of said opposed ends of said middle portion support means, for locking said elongated horizontal support means at a selected width and for being removable.

20. An accessory rack as set forth in claim 19 wherein said connection means further comprises:

a single short connection means attached to said center of each said elongated middle portion support means, each said single short connection means being in facing relation,

an elongated, single connection means connected at one end to said single short connection means of said elongated middle portion support means of said front end assembly and the other end of said elongated single connection means connected to said short connection means of said elongated middle portion support means of said rear end assembly, whereby said front end assembly and said rear end assembly are connected together and stabilized, and said elongated single connection means extends lengthwise over a middle of said vehicle.

21. An accessory rack as set forth in claim 20 further comprising a plurality of strengthening means attached between each said mounting means and a respective said first vertical support means, between each said elongated

middle portion support means and respective said vertical support means, and respective said short connection means.

22. A method for carrying a boat above a vehicle comprising:

mounting a first single vertical support so that said first single vertical support extends upward over a middle of a front of said vehicle, said middle being with respect to width of said vehicle,

mounting a second single vertical support so that said second single vertical support extends upward over said middle of a rear of said vehicle,

providing a first boat-receiving member to an end of said first single vertical support, said first boat-receiving member being horizontally disposed along said width of said vehicle and attached at its center to said top of said first vertical support,

providing a second boat-receiving member to an end of said second vertical support, said second boat-receiving member being horizontally disposed along said width of said vehicle,

using a connecting member, connecting said first boat-receiving member and said second boat-receiving member together, said connecting member extending over said middle of said vehicle.

23. A method as set forth in claim 22 further comprising adjusting a height of said first boat-receiving member over said vehicle and said second boat-receiving member over said vehicle to accommodate height of an operator of

said vehicle.

24. A method as set forth in claim 22 further comprising adjusting a width of said first boat-receiving member and said second boat-receiving member to accommodate boats of differing widths.

EVIDENCE APPENDIX

None

RELATED PROCEEDINGS APPENDIX

None